(1) S.B.CIVIL MISC. APPEAL NO.845/2006
(The Manager, RSRTC Vs. Smt.Chhoti Devi & ors.)

(2) S.B.CIVIL MISC. APPEAL NO.861/2006
(The Manager, RSRTC Vs. Gopa Ram & anr.)

(3) S.B.CIVIL MISC. APPEAL NO.862/2006
(The Manager, RSRTC Vs. Malla Ram & anr.)

DATED : 06.07.2006

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.Anil Bachhawat for the appellant

These three appeals arising out of the same award have been heard together, and after hearing learned counsel for the appellant, this Court is satisfied that the appeals remain absolutely bereft of substance and deserve to be dismissed without being admitted. As the appeals arise out of the same award, they are taken up for disposal by this common order.

The accident in question occurred on 11.09.2004 at 10.00 p.m. near village Deda on Jaisalmer road when an Armada Jeep bearing registration No.RJ19 1C 0787 that was driven by the deceased Pola Ram and proceeding towards Ramdeora was hit by an oncoming bus bearing registration No. RJ19 P7024 belonging to the Rajasthan State Road Transport Corporation and driven by non-applicant No.2

Narain Singh. Several persons occupying the jeep sustained injuries and the driver of the jeep Pola Ram succumbed to the injuries so sustained. Claim applications were made by the injured and so also by the dependents of the deceased Pola Ram for the loss suffered due to the accident. The Motor Accidents Claims Tribunal-I Jodhpur while consolidating the trial of these seven claim applications has proceeded to decide the same by the common impugned award dated 31.03.2006.

These appeals have been submitted by the owner of the vehicle in relation to the award made in Claim Application No.239/2005 filed by the dependents of Pola Ram, Claim Application No.240/2005 filed by the injured Gopa Ram and Claim Application No.241/2005 filed by the injured Malla Ram questioning only the quantum of compensation awarded in each case. The Tribunal has awarded compensation of Rs.7,09,500/- to the dependents of Pola Ram; of Rs.74,664/- to the injured Gopa Ram and Rs.1,64,600/- to the injured Malla Ram.

Having heard learned counsel Mr.Bachhawat for the appellant and having perused the impugned award, this Court is satisfied that the award on its quantification of compensation in each of these cases cannot be said to be highly excessive or exorbitant so to warrant any interference in appeal.

Claim Case No.239/2005 (Smt.Chhoti & ors.) (CMA No.845/2006)

The deceased Pola Ram was driving the ill-fated jeep and has been alleged by the claimants to be engaged in the driver's job and also dealing in the grocer's business. The claimants have stated his age at 32 years whereas in the post mortem report Ex.16 and injury report Ex.17 his age has been stated at 35 years. The Tribunal was of opinion that the deceased when engaged in the job of a driver was not likely to be carrying on other business and the bills in relation to the alleged business of the deceased have been discarded. Having regard to the circumstances of the case and the nature of the job he was engaged in, the Tribunal has taken his income at Rs.3000/- per month and providing for 1.5 times enhancement in future has taken an average monthly income of Rs.4500/- and deducting one third personal expenditure of the deceased has taken the dependency of the claimants at Rs.3000/- per month and has applied a multiplier of 17 taking the age of the deceased between 32 to 35 years. The Tribunal has further awarded Rs.10,000/- funeral expenses. Non-pecuniary losses have been awarded in the sum of Rs.40,000/- for loss of consortium to the claimant No.1 (wife of the deceased), loss of love and affection and guidance to the claimants No.2 to 5 (children of the deceased) and loss of

services to the claimants No.6 and 7 (parents of the deceased). The Tribunal has also found that the deceased remained under treatment from the date of accident of 11.09.2004 to the date of his demise of 26.10.2004 and with reference to the bills Ex.27 to Ex.146 has found Rs.33,874/- having been spent on treatment and providing for other bills that might have been misplaced has allowed Rs.34,000/- towards treatment expenditure and Rs.13,500/- towards miscellaneous expenses.

The award aforesaid appears wee bit on higher side but cannot be said to be excessive. The deceased was less than 35 years of age and was definitely engaged in the job of a driver but has been shown to be carrying on a grocer's business also and the observations by the Tribunal that he was not likely to carry on any other business because as a driver he was required to move out on the vehicle cannot be accepted as a sound proposition. In such self-employment the likelihood of a person engaging himself in more than one job and managing the affairs to earn maximum to his potential cannot be ruled out. In that view of the matter, the estimation by the Tribunal of Rs.4500/- per month average monthly income cannot be said to be too high and loss of dependency at Rs.3000/- per month appears a reasonable estimation. Choice of multiplier 17 with reference to the age of deceased

and the age of claimants including wife and four minor children cannot be said to be improper or unjustified. Therefore, the pecuniary loss figure cannot be said to be highly excessive. The Tribunal has awarded only Rs.40,000/- towards non-pecuniary compensation and such amount is also within reasonable limits. Moreover, despite finding that the deceased remained hospitalized for a period of 1 ½ months, and despite allowing treatment expenditure atRs. 34,000/- with reference to the bills of Rs.33,874/-, the Tribunal has merely awarded Rs.13,500/- towards other expenditure. Even if there had been a bit of liberal approach of the Tribunal while assessing other compensation, its restricting the compensation on account of injuries and treatment of the deceased merely in the sum of Rs.47,500/- sets off against any amount excessively awarded like Rs.10,000/- towards funeral expenses.

In its totality the award cannot be said to be highly excessive and does not call for any interference.

Claim Case No.240/2005 (Gopa Ram) (CMA No.861/2006)

So far the case of injured Gopa Ram is concerned, he has been awarded Rs.74,664/- comprising of Rs.15,000/- for pains and sufferings, Rs.44,064/- towards loss of future

income, Rs.4800/- towards miscellaneous expenditure and Rs.6000/- towards treatment expenditure and Rs.4800/- for two months' loss of income.

The said claimant has been 22 years of age and suffered, apart from two simple injuries, fracture of second metacarpal bone and upper one third shaft of femur and has been shown to have suffered 9% permanent disablement. Looking to the extent of injuries suffered by the said claimant and his 16 days' hospitalization, the amount awarded by the Tribunal remains rather on the lower side and cannot be said to be excessive so as to warrant interference in appeal.

Claim Case No.241/2005 (Malla Ram) (CMA No.862/2006)

So far the case of Malla Ram is concerned, he has been awarded Rs.1,64,600/- comprising of Rs.10,000/- for pains and sufferings, Rs.1,29,600/- towards loss of future income, Rs.15000/- towards miscellaneous expenditure, Rs.1000/- towards treatment expenditure and Rs.9000/- for three months' loss of income.

The said claimant has been 42 years of age at the time of accident and has suffered injury of compression of C-5 vertebra towards C-4 and has suffered 24% disablement. Looking to the nature of injury suffered by the said claimant

and his about 1 ½ month's hospitalization, the amount awarded by the Tribunal remains rather on the lower side. The Tribunal has merely awarded Rs.1000/- towards treatment expenditure and has not looked at the likelihood of substantial expenditure on treatment and dietary expenses. The amount towards pain and sufferings is also on the lower side. In the overall view of the matter, when the said appellant has been shown to be engaged in a cook's job earning about Rs.350/- per day, the assessment of income by the Tribunal at Rs.3000/- per month cannot be said to be on the higher side and looking to the kind of injury at the vertebral column, the assessment on the loss of future income with reference to the age of the victim appears reasonable. In its totality, the award in relation to this claimant also cannot be said to be excessive so as to warrant interference in appeal.

Therefore, there appears no reasonable ground to admit these appeals.

In the result, these three appeals fail and are dismissed summarily.

(DINESH MAHESHWARI),J.

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